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Limitation on Lawyer Contingent Fees

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ASHLEE N. BROWN

SA2005RF0064,

AmAT. #1-NS

February 8, 2005

RECEIVED
FEB 10 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

RE: Contingent Fee Limit Initiative
SA005RF0064
filed 02/04/05

Dear Ms. Knight:

A minor typographical error was discovered in the text of the Contingent Fee Limit initiative filed by me on Friday, February 4, 2005.

The error is located on page 2, section 3(c). As there is no "section 9" in the initiative, it should correctly read "section 3." The last sentence of section 3(c) should read as follows:

As for those matters that are not similar to matters in any other measure on the same ballot, the voters intend that those matters be made operative and are severable pursuant to section 3 of this measure.

The complete text of the initiative, as amended, is enclosed. Please don't hesitate to contact me at (916) 442-7757 if you have questions.

Sincerely,

Ashlee N. Brown

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

SECTION 1. FINDINGS AND DECLARATION OF PURPOSES

Lawyers who represent injured persons often charge a fee based on a percentage of the amount recovered. Contingent fees of up to 40% are not uncommon.

The people of the State of California find that excessive contingent fees deprive injured persons of too much of the money intended to compensate them for their injuries. Further, such excessive fees create an economic incentive for lawyers to file false or frivolous claims driving up the cost of insurance for all Californians.

SECTION 2. LIMITATION ON LAWYER CONTINGENT FEES

Section 6146.5 is added to the Business and Professions Code to read:

6146.5 (a) An attorney shall not contract for or collect a contingency fee in connection with a tort claim or a claim for personal injury or wrongful death, excluding a claim covered by Section 6146, in excess of twenty percent (20%) of the amount recovered for a claimant.

(b) The "amount recovered" results from subtracting the cost of settling or prosecuting the claim from the entire sum to be paid through settlement, arbitration or judgment.

(c) A contingency fee means any compensation, however calculated, that is payable only if an amount is recovered or an amount of liability is avoided.

(d) A contract that provides that a claimant shall pay, on a contingency basis, for services, other than attorney services, in connection with the settlement or prosecution of a claim specified in subdivision (a) is contrary to public policy and is void and unenforceable.

(e) No attorney shall refer any client to anyone for services in connection with a claim specified in subdivision (a) if that attorney or any member of the attorney's firm or immediate family would benefit directly or indirectly from that referral.

(f) The amount recovered when a claim specified in subdivision (a) is made against multiple defendants shall be the total of the amounts recovered against all defendants less the cost of settling or prosecuting the claim against all defendants.

(g) The fee limitation in subdivision (a) of this section may not be waived.

(h) The provisions of this section shall apply to the relationship between attorneys practicing in California and their clients, including claims filed in a federal court, to the maximum extent permitted by federal law.

SECTION 3. GENERAL PROVISIONS

(a) Severability: If any provision of this act or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications or the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(b) Amendment: The provisions of this act may be amended by the Legislature to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring. All other provisions of this act may only be amended by a statute that becomes effective when approved by the electorate.

(c) Conflicting Measures: The People recognize that more than one measure dealing with matters set forth in this measure may be on the ballot at the same time. It is the intent of the voters in passing this measure that the provisions that relate to similar matters in any other measure on the same ballot be considered, for purposes of subdivision (b) of Section 10 of Article II of the California Constitution, to be in conflict. As for those matters that are not similar to matters in any other measure on the same ballot, the voters intend that those matters be made operative and are severable pursuant to section 3 of this measure.